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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

17 CR 0074 (CM)

5 IBRAHIM ISSA, a/k/a "Tony  
6 Issa, "

7 Defendant.

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8  
9 New York, N.Y.  
November 28, 2018  
10 10:20 a.m.

11 Before:

12 HON. COLLEEN MCMAHON,

13 Chief District Judge

14 APPEARANCES

15  
16 GEOFFREY S. BERMAN,  
United States Attorney for the  
17 Southern District of New York  
ELIZABETH HANFT  
18 NOAH SOLOWIEJCZYK  
KYLE WIRSHBA  
19 Assistant United States Attorneys

20 BRAFMAN & ASSOCIATES, P.C.  
Attorneys for Defendant  
21 BENJAMIN BRAFMAN  
JOSHUA KIRSHNER  
22 STUART GOLD

23 ALSO PRESENT: SPECIAL AGENT ANTHONY DUBAR, USPS OIG  
24 PRIYA KUURLALL, Paralegal with Mr. Brafman  
25

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1 (In open court)

2 (Case called)

3 MS. HANFT: Good morning, your Honor. Elizabeth  
4 Hanft, Kyle Wirshba and Noah Solowiejczyk for the government,  
5 and with us here at counsel table is Special Agent Anthony  
6 Dubar from the United States Postal Service, Office of the  
7 Inspector General.

8 THE COURT: Hi there.

9 MR. BRAFMAN: Good morning, your Honor. Benjamin  
10 Brafman, Josh Kirshner and also Stuart Gold, attorneys, and  
11 Priya Kuurlall, who is a paralegal who will be joining us at  
12 trial. Good morning.

13 THE COURT: Good morning. Okay. I've disposed of the  
14 outstanding motions. I have a letter from Mr. Brafman, which I  
15 barely had a chance to glance at. Let me start with the  
16 government. Any issues from the government that have to be  
17 disposed of before trial?

18 MS. HANFT: Aside from the letter from Mr. Brafman,  
19 your Honor, the only thing we wanted to put on the record was  
20 just that a formal plea offer in this case was extended in  
21 January of 2017. It was later withdrawn. Since then, the  
22 parties have engaged in plea negotiations informally as  
23 recently as a few weeks ago, but a formal plea offer has not  
24 been made. As defense counsel indicated, the defendant was not  
25 interested.

IBSPISSC

1 THE COURT: Thank you.

2 MS. HANFT: Other than that, your Honor, we only would  
3 like to address the defense counsel's letter.

4 THE COURT: Okay. Which I don't have a copy.

5 MR. BRAFMAN: Your Honor, very briefly. The defendant  
6 and counsel have extensively discussed the different plea  
7 offers and the defendant has maintained from the very beginning  
8 that he wants this trial, that he is not guilty, and we are  
9 proceeding to trial.

10 And I stipulate that the government has, in fact,  
11 extended plea offers. We've talked about them on different  
12 occasions, but as we speak, the defendant is determined to go  
13 to trial, and we are prepared to do that.

14 THE COURT: Mr. Issa has always taken that position.

15 MR. BRAFMAN: Yes, ma'am. Your Honor, very briefly.  
16 The only thing -- I'm not going back to the Court's ruling on  
17 anything. I think we've preserved the record on that, and I  
18 appreciate the time your Honor has given us on that.

19 We have submitted a letter, and just briefly, Judge,  
20 the evidence in this case will show that both the undercover  
21 U.S. Postal Service cooperating witnesses and the defendant, at  
22 various times, discussed certain ethical prohibitions that are  
23 in the defendant's contract and are also known to the Postal  
24 Service officers.

25 In words and substance, they are not permitted to take

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1 anything from someone who does business with the Post Office,  
2 and if a vendor offers something, then the contract provides  
3 that the contract is voidable and the Postal Service person  
4 could lose his or her job or be brought up on ethical charges.

5 It is nothing -- it has nothing to do with the crime  
6 charged, in that you could violate the terms of your agreement  
7 by offering a cup of coffee to someone who you're doing  
8 business with, and it doesn't rise to the level of bribery  
9 because it doesn't have the elements that I think your Honor  
10 will ultimately charge this jury.

11 We don't want the jury to be confused about this issue  
12 for the weeks of the trial; so we're asking the Court to  
13 simply, when you have your preliminary instructions, include  
14 just a brief statement about that. It's a correct statement of  
15 the law, and it's something that both parties are going to be  
16 discussing, I think, at various times -- certainly the defense  
17 will at various times during the trial. And I think the jury  
18 should --

19 THE COURT: I hear you.

20 MR. BRAFMAN: Okay.

21 THE COURT: I've always wanted to give a charge at the  
22 beginning of the case, but that means giving the charge. That  
23 doesn't mean give a little excerpt of the charge. It means  
24 give the charge.

25 MR. BRAFMAN: But if they were -- in the case where,

IBSPISSC

1 like this, for example, where there is going to be some --

2 THE COURT: I won't give part of the charge. I will  
3 not give part. I'm happy to give the entire bribery charge  
4 upfront. You'll hear me say several of the counts will involve  
5 this. I'm going to charge you on this at the beginning and at  
6 the end, unless the government has some overwhelming objection.  
7 But then I'll get to work on the charge, like I have nothing  
8 better to do for the rest of this week. But I will not give a  
9 little, one-paragraph preces. I will give charge.

10 MR. BRAFMAN: But I --

11 THE COURT: They will hear all of the elements.

12 MR. BRAFMAN: Yes, your Honor. In the alternative,  
13 what we would then be asking, and it doesn't have to be done  
14 now, is when these issues arise in the course of the testimony,  
15 we would be asking for a curative instruction, just explaining  
16 to the jury that the issue of ethics is not what they are on  
17 trial for.

18 THE COURT: Well, they will certainly be charged at  
19 some point that ethics, ethical violations are not what they're  
20 on trial for; that he's on trial for violations of certain  
21 statutes that have certain elements, each of which the  
22 government must prove beyond a reasonable doubt to the  
23 satisfaction of 12 jurors.

24 MR. BRAFMAN: I understand that, and I'm not going to  
25 belabor the issue. I just want the Court to think about the

IBSPISSC

1 following. If they hear evidence that my client gives  
2 something of value to a government witness, they may conclude  
3 that that is what the charged crime is, and you will ultimately  
4 explain the charge of bribery. But if I give a Postal Service  
5 person a cup of coffee, I may lose my contract because it says  
6 you can't do that, but that is not, by itself, a crime, we  
7 submit, even if it violates the rules of the Postal Service,  
8 and I think --

9 THE COURT: Sounds like your closing argument.

10 MR. BRAFMAN: Yes, Judge, but --

11 THE COURT: I'm not going to deliver your closing  
12 argument.

13 MR. BRAFMAN: I'm not asking you --

14 THE COURT: You'll do a much better job than I will.

15 MR. BRAFMAN: I'm not willing to debate that, and I  
16 certainly don't want to give a closing argument, but I think  
17 from time to time, your Honor, we ask for curative instructions  
18 in a trial when something prejudicial is involved.

19 THE COURT: If I think something needs to be cured, I  
20 give a curative instruction. I've never failed to give a  
21 curative instruction, in 23 years of doing this, when I thought  
22 something happened that needed to be cured.

23 MR. BRAFMAN: So I assume that if I were to say, in  
24 words or substance, in my opening statement: You need to wait  
25 until you hear the Court's instructions at the end of the

IBSPISSC

1 trial, but I submit, respectfully, that if I give you a cup of  
2 coffee, by itself I may violate the rules of my contract, but  
3 it doesn't necessarily mean that I've committed the crime until  
4 you hear the instruction.

5 THE COURT: And then I will say to the jurors: Ladies  
6 and gentlemen of the jury, you have just heard Mr. Brafman make  
7 what is, in essence, a legal argument. I will tell you what  
8 the law is at the end of the case, and you will follow my  
9 instructions of law because you have just promised to do that.

10 I've done it before, and I'll do it again. That's a  
11 curative instruction.

12 MR. BRAFMAN: That's why I wanted to front this issue.

13 THE COURT: Okay.

14 MR. BRAFMAN: So that doesn't happen. Thank you, your  
15 Honor. I have nothing further, other than --

16 THE COURT: Okay, great.

17 MR. BRAFMAN: I assume we're going to go over the  
18 schedule that the Court --

19 THE COURT: Ahh, yes, the schedule. Okay. I now  
20 remember why I wanted this trial to start this week and not  
21 next week. It's because Chief Judge McMahon's duties during  
22 the month of December exceed even her duties during all other  
23 months. So can I get a really solid estimate from the  
24 government of how long you think your case is going to take?

25 MS. HANFT: Yes, your Honor. We still think that two

IBSPISSC

1 weeks is a conservative estimate. We think it's possible --

2 THE COURT: Conservative? You're crazy. You're not  
3 going to have seven days to put in testimony. You're just not  
4 going to do it.

5 MS. HANFT: Again, your Honor, conservatively. We  
6 have discussed several stipulations with defense counsel. We  
7 think that if we are able to agree to them, we will likely rest  
8 in fewer days.

9 THE COURT: How many witnesses are you calling?

10 MS. HANFT: Approximately 12, your Honor.

11 THE COURT: That's a four-day trial. In my courtroom,  
12 that is a four-day trial.

13 MS. HANFT: There are several recordings, and we are  
14 also --

15 THE COURT: That's a four-day trial, trust me. We  
16 move in this courtroom.

17 MS. HANFT: Okay. Your Honor --

18 THE COURT: We will have, unfortunately, more  
19 interruptions than usual, particularly on Monday, the 10th, but  
20 we will be picking a jury on Monday. I'm going to tell them  
21 it's a two-week trial and that they'll be home in plenty of  
22 time for the holidays.

23 The minute the jury is picked, should it be picked  
24 before the end of the day, I will give instructions and you  
25 will be ready to open. Everybody has to have their witnesses



IBSPISSC

1 here. If you don't have a witness here and it's before 4:30,  
2 the next words out of your mouth had better be "I rest."

3 MR. BRAFMAN: Judge?

4 THE COURT: And we don't sit on Fridays.

5 MR. BRAFMAN: What? I'm sorry?

6 THE COURT: We don't sit on Fridays, and we won't be  
7 sitting Friday the 7th. By the 14th, they should be  
8 deliberating, if not done.

9 Mr. Brafman, you, of course, have no obligation to  
10 tell me anything, but do you anticipate that you might be  
11 putting on a case?

12 MR. BRAFMAN: Yes, and it will be brief. And I also  
13 tell you that we are working diligently with the government to  
14 stipulate to as many things as possible --

15 THE COURT: I'm sure that that's true.

16 MR. BRAFMAN: -- to shorten the trial.

17 THE COURT: I have never had it happen otherwise with  
18 thoroughly professional counsel.

19 MR. BRAFMAN: Thank you.

20 THE COURT: All right. So I pick a jury using the  
21 struck method, which I think is fairest to the parties, fairest  
22 to counsel because you always know who your next juror is after  
23 you make a strike. So that means we will get a panel of -- I'm  
24 not going to have 80 jurors. I'm not going to do 80 jurors for  
25 a two-week trial with two alternates. No need to have 80

IBSPISSC

1 jurors. You can have 80 people in the room, if you want, but  
2 we will start with a group of about 50. 18, 20 of whom will be  
3 in the box, 30 of whom will be on the left side back here, and  
4 we will examine that group of jurors.

5 Hopefully, we will not -- I mean, it's holiday season;  
6 so a lot of people will, undoubtedly, try to get out of jury  
7 service and, hopefully, we'll not have to deal with a lot of  
8 those, but things go pretty quickly once we get past that  
9 prescreening.

10 So that will start on Monday. I haven't done the  
11 voir dire yet. Thank you for your suggestions. And then  
12 pretty much, we go. Let's look at my ridiculous calendar.  
13 What? I can't get CEO on this computer. It says the publisher  
14 cannot be verified. CEO is our internal calendar. Excuse me  
15 while I go down to Mr. O'Neil's.

16 Okay. I'll have a lunch meeting on Tuesday, but that  
17 shouldn't take more than a total of an hour and a half. This  
18 is off. Same is true on Wednesday. An hour on Thursday.  
19 We're great next week. We don't have serious problems. My  
20 worst day for interruptions is Monday, the 10th, but we'll be  
21 well into things by then. Oh, Wednesday, the 12th, I have a  
22 Second Circuit Judicial Council meeting. That was the other  
23 thing why I didn't want to be on trial. That's a mandatory, I  
24 have to be, from 12:00 to as long as it takes. I hope it won't  
25 take more than a couple of hours, at the Second Circuit

IBSPISSC

1 Judicial Council meeting. So we'll have a long lunch hour that  
2 day.

3 MR. BRAFMAN: Your Honor, excuse me. Does that mean  
4 that 12-10 we will not be sitting?

5 THE COURT: No, no, no. It just means we will have an  
6 unusually long lunch hour. It means we will be quitting early  
7 because I have to attend the opening of Judge Katzmann's  
8 Justice For All Center on the fifth floor of the old  
9 courthouse. You may have read about it in the newspaper over  
10 the weekend.

11 MR. BRAFMAN: Yes, your Honor. I was talking about  
12 Monday, the 10th.

13 THE COURT: Monday the 10th, that's what I'm talking  
14 about.

15 MR. BRAFMAN: So we will not be sitting Monday?

16 THE COURT: We will be sitting.

17 MR. BRAFMAN: Okay.

18 THE COURT: We will be much interrupted. We will be  
19 sitting, and we will be interrupted on Wednesday, the 12th  
20 because of the Second Circuit Judicial Council. That will be a  
21 long lunch hour.

22 If the jury is deliberating by the 14th, we will be  
23 around on Friday, and I'm not going anywhere. Okay? All  
24 right. I'm trying to keep these things to a minimum, but it's  
25 literally something comes in every day.

IBSPISSC

1           Okay. So make sure that Mr. O'Neil has a complete  
2 list of names and locations that we should apprise the jurors  
3 of. Make sure we have a complete list of everybody who's going  
4 to be at your table so we can introduce you properly, and  
5 beyond that, I think we're ready to go.

6           MR. BRAFMAN: Yes, your Honor. I'm sorry. Go ahead.

7           MS. HANFT: One final item, your Honor. In light of  
8 the Court's ruling today, I assume the Court has no objection  
9 to our filing our submissions on the docket now, our submission  
10 in support of the crimes fraud motion?

11          THE COURT: Yes, that's correct.

12          MS. HANFT: Thank you okay.

13          THE COURT: Indeed, in the event there is no  
14 objection, you must.

15          MR. BRAFMAN: Your Honor, in light of the Court's  
16 ruling, and without waiving our position, I assume that we  
17 could still examine Mr. Tsamutulis about how he came to be  
18 retained, who retained him and the fact that he was retained  
19 under a confidentiality agreement even if the Court views it as  
20 no longer a privilege.

21          THE COURT: You can certainly ask those kinds of  
22 questions, and the jury will consider them for whatever  
23 relevance they have, which may be some and maybe none.

24          MR. BRAFMAN: Yes, ma'am. And one final ask. When  
25 your Honor reviews the government's submission with respect to

IBSPISSC

1    voir dire, we're generally in agreement. We just ask the  
2    Court, respectfully, given the nature of the charges, that when  
3    you are questioning prospective jurors, the only thing we would  
4    ask you to focus on more than normal would be whether any  
5    member of their family is employed by the United States Postal  
6    Service, has been employed, and I assume your Honor recognizes  
7    that.

8           THE COURT: It is already there. That part is already  
9    there.

10          MR. BRAFMAN: Thank you.

11          THE COURT: Okay. I'll see you Monday. Great.

12          MR. BRAFMAN: Thank you.

13          THE COURT: Fabulous.

14          MS. HANFT: Thank you, your Honor.

15          THE COURT: Thank you, all.

16          (Adjourned)